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Section II (Remarks)

Claims 1-28 are pending. Claim 5 has been allowed. Claims 15-24 have been previously withdrawn. No new matter (35 USC § 132) has been introduced.

Rejection of Claims 1-4, 6-8, 10, 12-14 and 25-28 under 35 USC § 103(a)

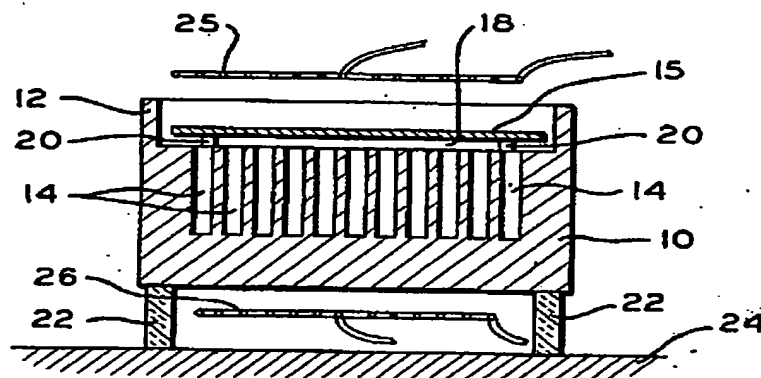
The above-noted claims are rejected under 35 USC § 103(a) as being obvious over U.S. Pat. No. 2,447,789 (hereinafter "Barr") in view of U.S. Pat. No. 5,336,324 (hereinafter "Stall") and/or U.S. Pat. No. 5,104,695 (hereinafter "Greer") for the reasons noted at pages 2-3 of the Office Action. Applicants respectfully traverse this rejection for the reasons noted below.

In particular, the Office Action asserts at page 2, lines 3-8, that:

Barr (Fig. 1) discloses a vaporizer comprising a thermally conductive block having a multiplicity of elongated, vertically positioned wells for placement of a vapor source material, and means for applying heat to the wells. Barr teaches (col. 2, lines 15-22 and col. 3, lines 20-42) that any suitable screening means can be used for preventing the escape during evaporation of particles appreciably greater than molecular size. {Emphasis added.}]

Greater attention needs to be paid to the above-underlined language. Specifically, Fig. 1 of Barr is reproduced below for further discussion:

FIG. 1



Referring to Fig. 1, Barr indicates (in relevant part at col. 2, lines 27-30) that:

Plate 15 may be mounted in any suitable way within flange 12 but above the top of body member 10 in order to leave a space 18 therebetween. [(Underlining emphasis added.)]

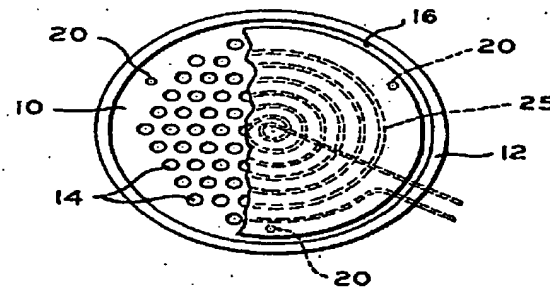
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Further referring to Fig. 1, Barr also indicates (at col. 2, lines 30-33) that:

For example, there may be provided in body member 10 a plurality of short studs 20 adapted to support plate 15. [(Emphasis added.)]

Finally, Barr depicts studs 20 more clearly in Fig. 2 thereof (which is reproduce below):

FIG. 2



It can be seen from Figs. 1 and 2 of Barr that studs 20 create a gap or space between plate 15 and cells 14 as well as another gap between plate 15 and flange 12. That description is corroborated in Barr (in relevant part at col. 3, lines 11-17 thereof) as noted below:

On the other hand, any insufficiently heated particles which might tend to rise into vapor are effectively prevented from doing so by contact with plate 15, since it is necessary for the vapor to travel first sidewise through space 18 and then upwards through space 16 before leaving the crucible. [(Underlining emphasis added.)]

The foregoing Figs. 1 and 2 of Barr and the accompanying relevant text (reproduced above) make it abundantly clear that cells 14 are not sealed because plate 15 sits atop studs 20 leaving gap 18 in place and because the circumference of plate 15 is smaller than the circumference 12 leaving gap 16 in place. In effect, Barr teaches a cover plate that does not seal cells 12.

By comparison, Applicants' rejected claims recite a "removable sealing lid" that "seals" the "thermally conductive block" as described in Applicants' specification at least at page 10, lines 21-25 and as recited in Applicants' rejected claim 1 – as noted below:

The method of utilizing the vaporizer system of the present invention includes introducing a source material 16 into elongated wells 12 within the thermally conductive block 14. Sealing lid 22 and shut off valve 26, preferably constructed as one piece, are positioned on the top of the conductive block [14] and preferable are sealed thereto, such as by an o-ring element and mechanical fasteners, such as 23. [(Underlining emphasis added.)]

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The above-described embodiment of Applicants' invention is depicted in Fig. 1 (of Applicants' specification originally filed and reproduced below – note that pointed arrows are directed to sealing lid 22):

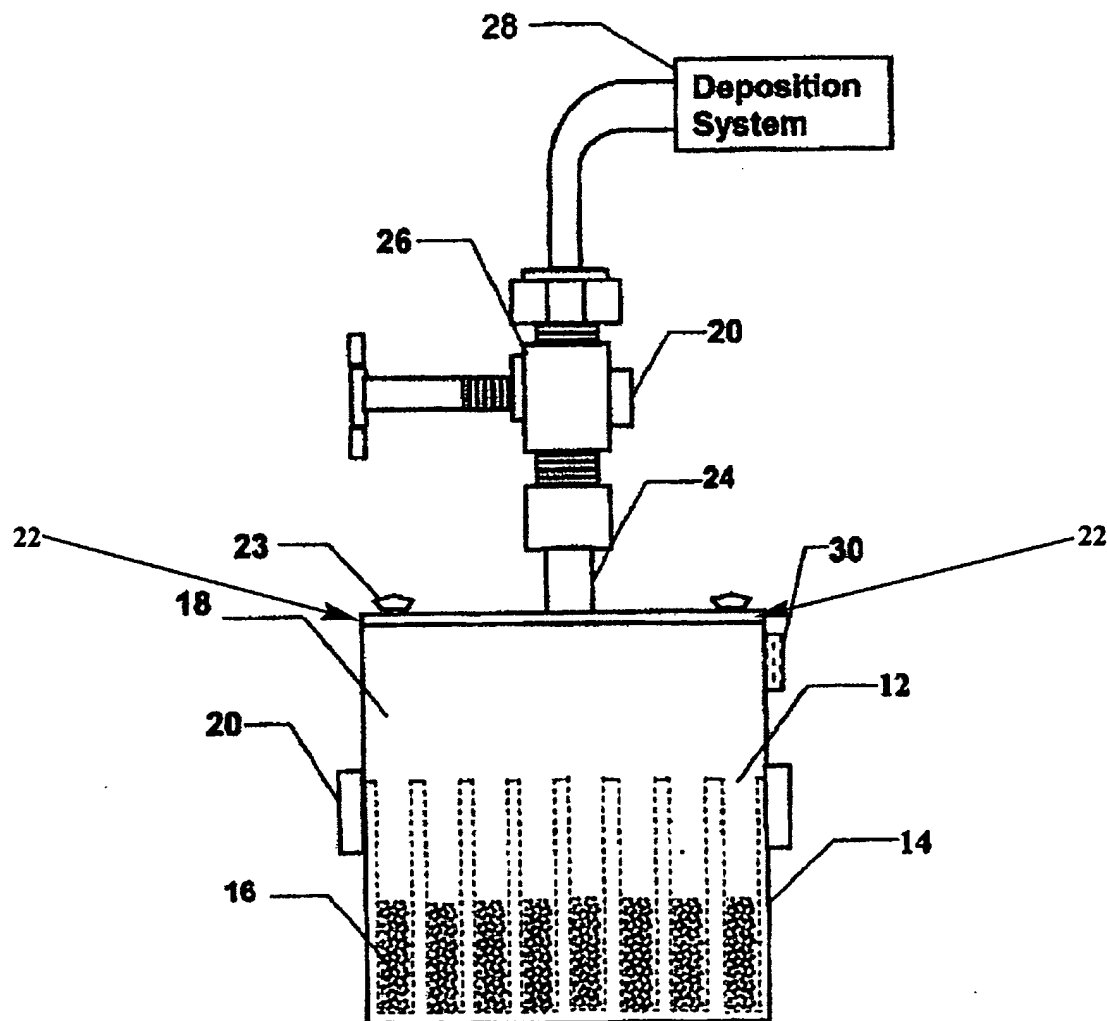


Figure 1

Furthermore, the “sealing lid” feature (in accordance with an embodiment) is recited in Applicants' rejected claim 1:

1. (Previously presented) A vaporizer comprising:

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a thermally conductive block comprising a top surface and bottom surface and a . . . ;

a heating device for applying heat . . . ;

a removable sealing lid positioned on the top of the thermally conductive block for sealing the thermally conductive block to form a closed vessel and removable for ease of filling the elongated wells; and

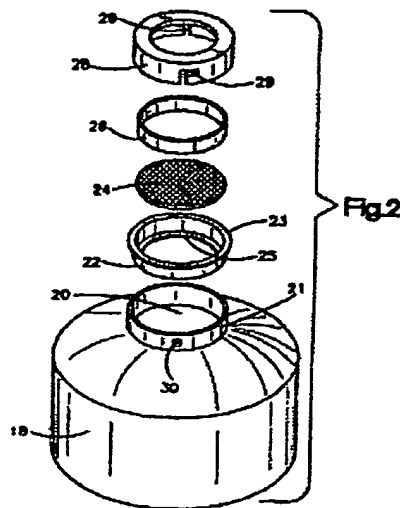
an openable and closable outlet . . . [(Emphasis added.)]

Thus, in view of the foregoing, it is clear that while Applicants' rejected claims require a "sealing lid", the Barr reference fails to disclose any such feature. In fact, Barr teaches away from using a "sealing lid" and instead teaches using a plate 15 that has gaps 18 and 16 below and around plate 15 as already noted above.

Because Barr (1) fails to disclose a "sealing lid", and (2) in fact, expressly teaches away from using a "sealing lid" in favor of a "gapped" plate 15, Barr itself fails to render obvious Applicants' rejected claims. Furthermore in view of (1) and (2) – the express teaching away – above, one of ordinary skill in the art would not be motivated to replace the "gapped" plate 15 with a "sealing lid."

In that regard, while the Office Action refers to Fig. 17a of Stall, the Stall reference does not teach or suggest the use of a "sealing lid" as a replacement for a "gapped" plate 15 of Barr in view of the express "teaching away" (2) of Barr itself.

Furthermore, Greer discloses the use of a "mesh screen" best seen in Fig. 2 of Greer reproduced below:



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The “mesh screen” 24 of Greer clearly is not a “sealing lid” as recited in Applicants’ rejected claims.

In view of the foregoing, (i) Barr does not teach or suggest the “sealing lid” of Applicants’ rejected claims; (ii) Barr teaches away from using a “sealing lid”; and (iii) neither Stall nor Greer rectifies the deficiencies of Barr.

Finally, the combination of Barr with Greer does not provide an apparatus having a “sealing lid.” Moreover, Stall gives no guidance regarding the use of a “sealing lid.” To conclude otherwise is to engage in the hindsight reconstruction of Applicants’ claimed invention impermissibly using the template provided in Applicants’ specification. Engaging in hindsight reconstruction to piece together bits and pieces of various references has repeatedly been held by the Federal Circuit (Court of Appeals for the Federal Circuit) to be impermissible and insufficient to establish a proper *prima facie* obviousness case against the Applicants’ rejected claims.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of the above-noted claims under 35 USC § 103(a) over Barr in view of Stall and/or Greer.

Rejection of Claims 2 and 9 under 35 USC § 103(a) over Barr in view of Stall and/or Greer and in further view of U.S. Application No. 2001/0008121 (hereinafter “Tanabe”)

The above-noted claims are rejected under 35 USC § 103(a) over Barr in view of Stall and/or Greer further in view of Tanabe for the reasons noted at page 3 of the Office Action. This rejection is respectfully traversed for the reasons noted below.

In particular, Applicants’ prior remarks and comments regarding the shortcomings of Barr, Stall and Greer are equally applicable to the instant rejection of claims 2 and 9 further in view of Tanabe.

Additionally, it is unnecessary to address the merits of the statement in the Office Action (at page 3, lines 9-10) that Tanabe teaches “that a vaporizer temperature can be successfully controlled using a thermocouple” because Tanabe does not rectify the above-noted deficiencies of Barr in view of Stall and/or Greer regarding the “sealing lid” recited in Applicants’ rejected claims.

Accordingly, even if Tanabe were combined with the other cited references (as noted above), that combination does not arrive at the invention of Applicants’ rejected claims because Tanabe does not address the use of a “sealing lid” especially in the face of the express “teaching away” of Barr of using a “gapped” plate 15 instead of a “sealing lid.”

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In view of the foregoing, Applicants respectfully request reconsideration of the rejection of the above-noted claims under 35 USC § 103(a) over Barr in view of Stall and/or Greer further in view of Tanabe.

Rejection of Claims 11 and 28 under 35 USC § 103(a) over Barr in view of Stall and/or Greer and in further view of U.S. Pat. No. 3,647,197 (hereinafter "Holloway")

The above-noted claims are rejected under 35 USC § 103(a) over Barr in view of Stall and/or Greer further in view of Holloway for the reasons noted at pages 3-4 of the Office Action. This rejection is respectfully traversed for the reasons noted below.

Specifically, Applicants' prior remarks and comments regarding the shortcomings of Barr, Stall and Greer are equally applicable to the instant rejection of claims 11 and 28 further in view of Holloway.

Also, it is unnecessary to address the merits of the statement in the Office Action (at page 3, lines 13-15) that Holloway teaches "that it was known in the prior art to use aluminum as the material of construction for a thermally conductive vaporizer" because Holloway does not rectify the above-noted deficiencies of Barr in view of Stall and/or Greer regarding the "sealing lid" recited in Applicants' rejected claims.

Accordingly, even if Holloway were combined with the other cited references (as noted above), that combination does not arrive at the invention of Applicants' rejected claims because Holloway does not address the use of a "sealing lid" especially in the face of the express "teaching away" of Barr of using a "gapped" plate 15 instead of a "sealing lid."

Finally, the assertion in the Office Action that "the particular dimensions that he [Barr] discusses are merely exemplary" ignores the express "teaching away" of Barr that it is desirable to use "gapped" plate 15. There is ample Federal Circuit (Court of Appeals for the Federal Circuit) case law that states that when considering a reference, the entire reference must be taken as a "whole." In other words, the teachings and the teachings away of a reference must be considered together as a whole and that it is impermissible to simply "pick and choose" what one "likes" in a reference and "ignore" what one "does not like" in a reference.

It is clear that Barr favors a "gapped" plate 15 as depicted in Figs. 1 and 2 thereof and further described therein. It is improper to ignore such "teachings away" of Barr to conclude that a *prima facie* case of obviousness has been established.

Particularly, for the very reasons noted herein, a proper *prima facie* case of obviousness has not been established. Therefore, the burden of the U.S. Patent & Trademark Office (USPTO) of establishing a proper *prima facie* case of obviousness has not been satisfied. Thus, the USPTO is obligated under the U.S. patent laws to allow Applicants' rejected claims.

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In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of the above-noted claims under 35 USC § 103(a) over Barr in view of Stall and/or Greer further in view of Holloway.

Rejoinder under MPEP § 821.04 et seq.

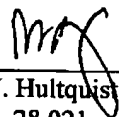
Applicants respectfully request rejoinder of all withdrawn claims under the provisions of MPEP § 821.04 et seq.

CONCLUSION

Applicants respectfully request allowance of the pending claims. If any matters remain outstanding that prevent such allowance, it is earnestly requested that the Examiner contact the undersigned to resolve any outstanding issues to expedite allowance of the pending claims. The undersigned may be contacted at the below noted address and phone no.

Respectfully submitted,

Date: July 18, 2006



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